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November 9, 2009

VIA ECF

Honorable Allyne R. Ross
United States District Court - Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

RE: Christopher E. Brown v. St. John's University
Civ. Action No. 08-2218
Our file No.: 100.16014

Dear Judge Ross,

We represent defendant/third-party plaintiff St. John's University ("St. John's") in the above-referenced matter. In accordance with the Judge Pohorelsky's instructions at the October 23, 2009 Civil Conference, St. John's respectfully requests that the Court schedule a pre-motion conference to discuss St. John's intentions to file a motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Counts I and II of plaintiff's First Amended Complaint as against St. John's. As discussed at the October 23, 2009 conference, if St. John's is successful in its motion, discovery for all parties will be drastically reduced: rather than a civil rights action, the lawsuit would become a simple negligence case concerning a roadway defect.

ADA Claim

According to Plaintiff's First Amended Complaint, Plaintiff alleges that St. John's is a public accommodation, subject to the mandates of Title III of the American with Disabilities Act of 1990, 42 U.S.C. §121811 *et seq.* (hereinafter referred to as "ADA"). St. John's denies that it is a public accommodation subject to the ADA.

Although Title III of the ADA prohibits discrimination against an individual on the basis of disability by a public accommodation, §36.102 of Title III expressly carves out an exception to Title III's applicability for religious institutions. Specifically, §36.102(e) states as follows:

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(e) *Exemptions and exclusions.* This part does not apply to any private club (except to the extent that the facilities of the private club are made available to customers and patrons of a place of public accommodation), or to any religious entity or public entity.

This exemption “is very broad . . . [e]ven when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage.” 28 C.F.R. Part 36, Appendix B.

St. John’s intends to demonstrate that it is a religious entity as a matter of law, having fostered and promoted its religious heritage since its founding by the Vincentian Fathers in 1871.¹ Significantly, the Court of Appeals of the State of New York has previously held that St. John’s constitutes religious organization. *Scheiber v. St. John’s University*, 84 N.Y.2d 120, 615 N.Y.S.2d 332 (1994). In making such a determination, the court noted that “[a]s an educational organization operated in connection with the Vincentian order – a religious institution or organization”, St. John’s plainly falls within the religious entity exemption. *Id.* at 126. Accordingly, St. John’s is thus exempt from the requirements of Title III of the ADA.²

Additionally, St. John’s intends to join in Langan’s motion to dismiss plaintiff’s claims under New York Civil Rights Law §40-c and §40-d, for the reasons previously explicated by Langan. In short, New York Civil Rights Law §40-d is a penal statute intended by the legislature to act as an enforcement vehicle for the rights protected in §40-c. The law in New York is well settled that §40-d is only applicable as a penalty against a “person” and cannot be used against institutions or corporation. Further, §40-c requires that plaintiff demonstrate an intent to discriminate against the plaintiff in the exercise of his civil rights. A plain reading of Plaintiff’s First Amended Complaint reveals the absence of any such intentional element.

Respectfully submitted,



Elaine N. Chou (EC7688)

cc.:
Registered ECF users

¹ The Vincentian Fathers were founded by St. Vincent de Paul in 1625.

² New York Executive Law §296(11) contains a religious institution exemption as well.

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 2009, I electronically filed the foregoing **Letter dated November 9, 2009 re: St. John's Request to schedule a Pre-Motion Conference**, with the Clerk of Court using the CM/ECF system which will send notification of filing to the following e-mail addresses:

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